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PUBLIC LAW 99-169—DEC. 4, 1985

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1986

71-139 O - 86 (169)

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Public Law 99-169
99th Congress

An Act

Dec. 4, 1985
[H.R. 2419]

To authorize appropriations for fiscal year 1986 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

Intelligence Authorization Act for Fiscal Year 1986.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1986".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1986 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1986, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany H.R. 2419 of the Ninety-ninth Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

Supra.

AUTHORIZATION OF APPROPRIATIONS FOR COUNTERTERRORISM ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION

SEC. 103. (a) There is authorized to be appropriated for fiscal year 1986 the sum of $50,600,000 for the conduct of the activities of the

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Federal Bureau of Investigation to counter domestic and international terrorism.

(b) Of the sums authorized to be appropriated by subsection (a), $500,000 is authorized to be made available by the Attorney General for making payments in advance for expenses arising out of contractual and reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities to counter domestic and international terrorism.

PERSONNEL CEILING ADJUSTMENTS

SEC. 104. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 1986 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

RESTRICTION ON SUPPORT FOR MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA

SEC. 105. (a) Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or to section 106 of the Supplemental Appropriations Act, 1985 (Public Law 99-88).

Post, p. 1005.

Ante, p. 328.

(b) Nothing in this section precludes—

(1) administration, by the Nicaraguan Humanitarian Assistance Office established by Executive order 12530, of the program of humanitarian assistance to the Nicaraguan democratic resistance provided for in the Supplemental Appropriations Act, 1985, or

50 FR 36031.

(2) activities of the Department of State to solicit such humanitarian assistance for the Nicaraguan democratic resistance.

AUTHORIZATION OF APPROPRIATIONS FOR DESIGN AND CONSTRUCTION OF A RESEARCH AND ENGINEERING FACILITY AT THE NATIONAL SECURITY AGENCY HEADQUARTERS COMPOUND

SEC. 106. The National Security Agency is authorized to secure the design and construction of a research and engineering facility at its headquarters compound at Ft. Meade, Maryland. A single continuous contract may be employed to facilitate completion of the building authorized by this section, and the Secretary of Defense is authorized to contract for design and construction in advance of appropriations therefor, but the cost of such facility may not exceed

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$75,064,000. Of the amounts authorized to be appropriated under section 101(4) of this Act, there is authorized to be appropriated for fiscal year 1986 the sum of $21,364,000 for design and construction of the facility authorized by this section during fiscal year 1986.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1986 the sum of $22,083,000.

AUTHORIZATION OF PERSONNEL END-STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two-hundred and thirty-three full-time personnel as of September 30, 1986. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1986, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1986, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1986, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1986 the sum of $101,400,000.

TITLE IV—PROVISIONS RELATING TO INTELLIGENCE AGENCIES

SEC. 401. (a) Title V of the National Security Act of 1947 (50 U.S.C. 413), relating to accountability for intelligence activities, is amended by adding at the end thereof the following:

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"FUNDING OF INTELLIGENCE ACTIVITIES

"SEC. 502. (a) Appropriated funds available to an intelligence agency may be obligated or expended for an intelligence or intelligence-related activity only if— 50 USC 414.

"(1) those funds were specifically authorized by the Congress for use for such activities; or

"(2) in the case of funds from the Reserve for Contingencies of the Central Intelligence Agency and consistent with the provisions of section 501 of this Act concerning any significant anticipated intelligence activity, the Director of Central Intelligence has notified the appropriate congressional committees of the intent to make such funds available for such activity; or 50 USC 413.

"(3) in the case of funds specifically authorized by the Congress for a different activity—

"(A) the activity to be funded is a higher priority intelligence or intelligence-related activity;

"(B) the need for funds for such activity is based on unforseen requirements; and

"(C) the Director of Central Intelligence, the Secretary of Defense, or the Attorney General, as appropriate, has notified the appropriate congressional committees of the intent to make such funds available for such activity;

"(4) nothing in this subsection prohibits obligation or expenditure of funds available to an intelligence agency in accordance with sections 1535 and 1536 of title 31, United States Code.

"(b) Funds available to an intelligence agency may not be made available for any intelligence or intelligence-related activity for which funds were denied by the Congress.

"(c) As used in this section—

"(1) the term 'intelligence agency' means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

"(2) the term 'appropriate congressional committees' means the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives and the Select Committee on Intelligence and the Committee on Appropriations of the Senate; and

"(3) the term 'specifically authorized by the Congress' means that—

"(A) the activity and the amount of funds proposed to be used for that activity were identified in a formal budget request to the Congress, but funds shall be deemed to be specifically authorized for that activity only to the extent that the Congress both authorized the funds to be appropriated for that activity and appropriated the funds for that activity; or

"(B) although the funds were not formally requested, the Congress both specifically authorized the appropriation of the funds for the activity and appropriated the funds for the activity.".

(b) The table of contents at the end of the first section of such Act is amended by inserting the following after the item relating to section 501:

"Sec. 502. Funding of intelligence activities.".

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50 USC 414 note.

(c) The amendment made by section 401(a) of this Act shall not apply with respect to funds appropriated to the Director of Central Intelligence under the heading "ENHANCED SECURITY COUNTERMEASURES CAPABILITIES" in the Supplemental Appropriations Act, 1985 (Public Law 99-88).

Ante, p. 293

COUNTERINTELLIGENCE CAPABILITIES IMPROVEMENTS REPORT

SEC. 402. (a) Within one hundred and twenty days after the date of enactment of this Act, the President shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the capabilities, programs, and policies of the United States to protect against, detect, monitor, counter, and limit intelligence activities by foreign powers, within and outside the United States, directed at United States Government activities or information, including plans for improvements which presently are within the authority of the executive branch to effectuate, and recommendations for improvements which would require legislation to effectuate.

(b) The report described in subsection (a) of this section shall be exempt from any requirement for publication or disclosure.

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 403. (a)(1) During fiscal year 1986, the transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be considered a significant anticipated intelligence activity for the purpose of section 501 of the National Security Act of 1947.

50 USC 413.

(2) Paragraph (1) does not apply if—

(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

(B) the transfer—

(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

22 USC 2311.
22 USC 2751 note.

Ante, p. 204.
40 USC 471 note.

(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

(b) As used in this section—

(1) the term "intelligence agency" means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities;

(2) the terms "defense articles" and "defense services" mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

Ante, pp. 156, 203, 204.

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(3) the term "transfer" means—
(A) in the case of defense articles, the transfer of possession of those articles, and
(B) in the case of defense services, the provision of those services; and
(4) the term "value" means—
(A) in the case of defense articles, the greater of—
(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or
(ii) the replacement cost; and
(B) in the case of defense services, the full cost to the Government of providing the services.

TITLE V—GENERAL PROVISIONS

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 501. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW

SEC. 502. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

TITLE VI—FACILITATING NATURALIZATION OF CERTAIN FOREIGN INTELLIGENCE SOURCES

IMMIGRATION AND NATIONALITY ACT AMENDMENT

SEC. 601. Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end thereof the following new subsection:

"(g)(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that a petitioner otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the petitioner may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 313 of this Act, and no residence within the jurisdiction of the court shall be required: *Provided,* That the petitioner has continuously resided in the United States for at least one year prior to naturalization: *Provided further,* That the provisions of this subsection shall not apply to any alien described in subparagraphs (A) through (D) of paragraph 243(h)(2) of this Act.

Aliens.

8 USC 1424.

8 USC 1253.

"(2) A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner. Proceedings under this subsection

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shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

"(3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each petition under the provisions of this subsection.".

TITLE VII—ADMINISTRATIVE PROVISIONS

USE OF PROCEEDS FROM DEFENSE DEPARTMENT COUNTERINTELLIGENCE OPERATIONS

SEC. 701. (a) During fiscal year 1986, the Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the Military Departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, if use of appropriated funds to meet such expenses would not be practicable.

98 Stat. 1152.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management and disposition of proceeds from counterintelligence operations conducted by components of the Military Departments, including effective internal systems of accounting and administrative controls.

RETIREMENT BENEFITS FOR CERTAIN CENTRAL INTELLIGENCE AGENCY EMPLOYEES SERVING IN UNHEALTHFUL AREAS

SEC. 702. Section 251 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note) is amended by inserting "(a)" after "SEC. 251." and by adding at the end thereof the following new subsection:

"(b) The Director of Central Intelligence may from time to time establish, in consultation with the Secretary of State, a list of places outside the United States which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of service of a participant under this Act for the purpose of retirement, fractional months being considered as full months in computing such service. No extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service.".

TITLE VIII—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

SEC. 801. (a) Part III of title 5, United States Code, is amended by adding after chapter 89 the following new subpart:

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"Subpart H—Access to Criminal History Record Information

"CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

"Sec.
"9101. Criminal history record information for national security purposes.

"§ 9101. Criminal history record information for national security purposes

5 USC 9101.

"(a) As used in this section:

"(1) The term 'criminal justice agency' includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

Law enforcement. State and local governments.

"(2) The term 'criminal history record information' means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

"(3) The term 'classified information' means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

"(4) The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

"(5) The term 'local' and 'locality' means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

"(b)(1) Upon request by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office or agency for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of

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providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.

"(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

Claims.

"(3)(A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office or agency of criminal history record information obtained from the State or locality pursuant to this subsection, if the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office, or agency.

"(B) When the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

"(c) The Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

"(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request.".

(b) The table of contents of part III of title 5, United States Code is amended by adding at the end thereof:

"Subpart H—Access to Criminal History Record Information

"91. Access to Criminal History Records for National Security Purposes .....9101.".

Effective date.
5 USC 9101 note.

SEC. 802. The amendments made by section 801(a) of this Act shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act.

Ante, p. 1009.

Report.
5 USC 9101 note.

SEC. 803. (a) Within two years after the date of enactment of this Act, the Department of Justice, after consultation with the Department of Defense, the Office of Personnel Management, and the Central Intelligence Agency, shall report to the appropriate committees of the Congress concerning the effect of section 9101(b)(3) of title

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5, United States Code, as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under section 9101(b)(3) of title 5, United States Code, for such agreements. *Ante*, p. 1009.

(b) Three years after the date of enactment of this Act, section 9101(b)(3) of title 5, United States Code, shall expire. Termination date. *Ante*, p. 1009.

Approved December 4, 1985.

LEGISLATIVE HISTORY—H.R. 2419 (S. 1271):

HOUSE REPORTS: No. 99-106, Pt. 1 (Comm. on Intelligence), Pt. II (Comm. on Armed Services) and No. 99-373 (Comm. on Conference).
SENATE REPORTS: No. 99-79 accompanying S. 1271 (Comm. on Intelligence) and No. 99-136 accompanying S. 1271 (Comm. on Armed Services and Comm. on Governmental Affairs).
CONGRESSIONAL RECORD, Vol. 131 (1985):
July 18, considered and passed House.
Sept. 26, considered and passed Senate, amended, in lieu of S. 1271.
Nov. 19, House agreed to conference report.
Nov. 21, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 21, No. 49 (1985):
Dec. 4, 1985, Presidential statement.

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